

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Merrie MARTIN

Confirmation No.: 7200

Application No.: 10/695,835

Group Art Unit: 1761

Filing Date: October 30, 2003

Examiner: L. TRAN

For: READY TO BAKE REFRIGERATED
DOUGH

Attorney Docket No.: 88265-14036

DECLARATION OF MERRIE MARTIN UNDER 37 C.F.R. § 1.132

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

I, Merrie Martin, do declare that:

1. I am a citizen of the United States and reside at 9097 Lake in the Woods Trail, Bainbridge twp 44023, OH. I am the inventor of the invention described in the above-noted pending patent application, entitled "Ready to Bake Refrigerated Dough."

2. I hold a Ph.D. Degree in Grain Science and Industry from Kansas State University.

3. I presently hold the position of Project Leader at Nestec S.A. where I am responsible for product development of chilled dough. I have held this position for 14 years. In particular, I have been specifically involved in researching, developing, and marketing bakery dough products.

4. I have reviewed and understand the above-identified patent application, the pending claims thereof, the pending Office Action, and the references cited by the Examiner in the above-identified application. Specifically, these references include U.S. Patent No. 6,551,640 to Drantch et al. ("Drantch") and International Publication No. WO 01/06858 to

Blaschke et al. ("Blaschke"). I am making the following statements as one of ordinary skill in the art in support of the patentability of the pending claims.

5. The above-identified application is directed to a place and bake packaged dough product in the form of a bar, as well as methods for preparing fresh baked products using the same. When the product is to be prepared, the bar is simply removed from its packaging, placed directly in a pan, and baked in an oven. The only manipulation needed by the consumer is the placement of the dough, *e.g.*, brownie dough, into the pan, prior to baking. This avoids the waste of time and waste of dough necessitated by the forming and shaping required when preparing conventional fresh baked dough products. Moreover, the final product is not collapsed in the center of the pan after baking. The examples in the application were prepared by me or under my direction and control.

6. Drantch relates to a shelf-stable dough for baked goods wherein fat-bearing pieces, that are dispersible within the dough, resist softening by depression of melting point within the dough. Drantch focuses on the problem of the transformation of chocolate chips from their solid state to their liquid state in cookie dough at room temperature. As such, Drantch is primarily concerned with the preparation and baking of chocolate chip-containing doughs such as cookies. While Drantch does state that its dough is prepared into finished baked goods by simple addition to a baking container and baking to form a finished baked good, Drantch still requires significant manipulation by the consumer that results in wasted time and dough material. Drantch does not teach that it was possible to simply remove dough from its packaging and place it directly into a baking pan, with no additional manipulation. In fact, Drantch clearly teaches that its edible doughs are held and shaped by hand, rather than requiring tools, and it clearly discloses that the dough must be preformed in a baking tray specific to the desired type of final baked product.

7. Cookies, and the various other doughs noted by Drantch (at Col. 6, lines 7-13) are ordinarily prepared by spooning and dropping small portions of dough onto a baking sheet, or even breaking off pre-measured pieces of scored or grooved dough from a pre-packaged ready-to-bake dough (*See, e.g.*, Blaschke), and then baking to form individual-sized cookies or other dough products. A consumer would still be required to measure a certain amount of dough and shape the dough, or break off pre-measured pieces of dough, and then space the dough onto the baking pan to form the dough products. Drantch does not even

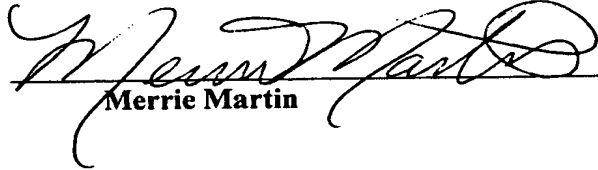
disclose pre-measured pieces of scored or grooved dough that would avoid the need to both measure and shape the dough. Moreover, Drantch provided no motivation to prepare or provide dough in the form of a solid, monolithic bar for baking, much less providing a dough that does not collapse in the center of the pan even after baking. In fact, cookies are not generally baked in blocks because a large block of cookies will not have the desired dual texture of crispness on the outer edges and chewiness in the center. Drantch, therefore, also fails to provide a reasonable expectation of success to one attempting to shape and bake dough in the form of a bar, as presently recited. As such, Drantch also fails to disclose or suggest the preparation of a bar, or a place and bake dough product, that is baked to produce a final product that is not collapsed in the center of the pan after baking.

8. Blaschke describes a ready-for-use bakery dough product, which is provided in a form having grooves or score lines that define the individual pieces of the final baked product. Blaschke does not teach or suggest baking the whole block of dough as a monolithic mass. Rather, Blaschke only teaches breaking the block into the pieces defined by the grooves or score lines. The grooves on the product of Blaschke direct the consumer to divide the block into separate pieces. The separation of the pieces of Blaschke facilitates heat flow around the pieces for more uniform baking and to provide a dual texture of a crispy outside and a chewy inside. The present invention, however, surprisingly and unexpectedly provides uniform baking of a single entire block of dough. The block of the claimed invention is advantageously retained as a bar rather than being separated into smaller pieces prior to baking, which results in a chewier center than expected of separately baked pieces even if they are eventually rejoined.

9. It is thus my professional opinion, as one of ordinary skill in the art, that it would not have been obvious to modify Drantch or Blaschke to obtain the place and bake dough products, or methods of providing a fresh baked product using the place and bake doughs, claimed by the above-identified application. It simply would not have been reasonable to expect to successfully achieve the claimed invention from the disclosure of Drantch or Blaschke, even if these were considered together. Moreover, the claimed invention provides a surprising and unexpected advance in the drastic reduction of mess, wasted time, and wasted dough materials by avoiding the need for the consumer to manipulate the dough before it is placed on a pan and baked.

10. I further declare that all statements made herein of my knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Dated: December 16, 2004


Merrie Martin